

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-261 of 2008 (O&M)

Date of Decision: 18.2.2015

Santro Devi

....Appellant.

Versus

Virender Kumar alias Virender Singh

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE SNEH PRASHAR.**

PRESENT: Mr. Gobind Dhanda, Advocate for the appellant.

Mr. Sarwan Singh, Senior Advocate with
Mr. N.S. Rapri, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. The instant appeal has been filed by the appellant-wife against the judgment and decree dated 1.10.2008 passed by the Additional District Judge, Kaithal, whereby the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce was allowed.

2. Shorn of unnecessary details, the facts relevant for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 15.1.1996 at village Kurar according to Hindu rites and ceremonies. The marriage was duly consummated but no issue was born out of the said wedlock.

After the marriage, the behaviour of the appellant was of unbecoming of

a wife and she was under the influence of her parents and kept on insulting the respondent and his family members. She left the matrimonial home with her brother after five days of the marriage and did not return thereafter. However, in June, 1996, she joined the company of the respondent on the repeated requests of the respondent and his parents but her behaviour worsened and she started humiliating them on petty matters. She had been disrespectful towards the elders in the family and used to refuse to prepare meals. Even she insulted the appellant in the presence of the guests. Whenever she was asked to prepare tea, she used to say "*teri maa baithi hai usi se banwa le main teri naukhar nahi hun.*" In the month of October, 1996, the brother of the appellant visited the house of the respondent and when he was apprised about the behaviour of the appellant, he became furious and threatened to shoot if any one made complaint about his sister. On 22.10.1996, the appellant was taken by her brother on the pretext that her mother wanted to see her and also for karva chauth festival but she did not turn up thereafter. The respondent approached the family members of the appellant along with Mewa Singh and Ajmer Singh but he was pushed out by her brother. Thereafter, the appellant got registered an FIR No. 133 dated 12.3.1997 under Sections 323, 406, 498-A, 506 of the Indian Penal Code, Police Station Kalayat against the respondent, his parents and his sister and her husband. In the said case, the sister and brother-in-law of the respondent were discharged whereas the respondent and his parents were acquitted by the trial court vide judgment dated 6.5.2006. She filed a petition under Section 13 of the Act for divorce on 13.8.1998 on the ground of cruelty and the said petition was allowed by the trial court. On appeal by the respondent, this Court vide judgment

dated 23.4.2003 set aside the judgment and decree passed by the trial court holding that the husband had not caused any cruelty to the wife, against which the appellant filed SLP No. 9471 of 2003 before the Supreme Court and the same was dismissed vide judgment dated 7.4.2005. She also filed a petition under Section 125 of the Code of Criminal Procedure in 1997 in which she was granted maintenance at the rate of ₹ 500/- per month. The appellant contracted a second marriage on 31.12.2000 with one Kartar Singh son of Oma, resident of village Manana, Tehsil Smalkha, District Panipat despite the stay order passed by this Court in the appeal filed by the respondent against the judgment and decree passed by the trial court. The criminal complaint filed by the respondent against the respondent under Section 494 of the Indian Penal Code was pending adjudication before the trial court. The appellant had also deserted the respondent since 22.10.1996 and had not joined him during all these years. Accordingly, the respondent filed a petition under Section 13 of the Act for dissolution of marriage by a decree of divorce. Upon notice, the said petition was resisted by the appellant by filing a written statement. Various preliminary objections were raised therein. It was pleaded that the behaviour of the respondent had been cruel towards the appellant and he used to demand dowry and torture her for not bringing sufficient dowry. She also lodged an FIR against the respondent in this regard. She was shunted out from the matrimonial home just after five days of the marriage. The parents of the appellant convened a panchayat where the respondent agreed to keep her but the attitude and behaviour of the respondent and his family members remained unchanged and ultimately she was again turned out of the matrimonial home after giving beatings. Thereafter, she filed a

divorce petition which was allowed by the trial court and the appeal filed by the respondent before this Court was allowed against which the SLP filed by her was dismissed by the Apex Court. The other averments made in the petition were denied and a prayer for dismissal of the same was made. The respondent filed replication controverting the averments made in the written statement. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner is entitled to a decree of divorce on the ground as alleged in the petition?OPP
2. Whether the petition is not maintainable in the present form? OPD
3. Whether the petitioner is estopped to file the present petition by his own act and conduct?OPD
4. Relief.

3. In support of his case, the respondent examined as many as five witnesses and also placed on record the documents of the earlier litigation and certain photographs. On the other hand, the appellant examined herself as RW1 and her brother Hazoor Singh as RW2.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 in favour of the respondent holding that the respondent was entitled to a decree of divorce on the ground of desertion and cruelty as the appellant was guilty of treating the respondent with cruelty after the solemnization of the marriage. Issues No.2 and 3 were decided against the appellant. Accordingly, the trial court vide judgment and decree dated 1.10.2008 allowed the petition

and dissolved the marriage between the parties by a decree of divorce. Hence, the present appeal.

5. Learned counsel for the appellant submitted that from the evidence on record, no ground of cruelty was made out. It was further submitted that the respondent made a false story to get a decree of divorce whereas the respondent and his family members treated the appellant with cruelty. According to the learned counsel, the allegations levelled by the respondent were general in nature and without any specific instances. It was also contended that the appellant was turned out of the matrimonial home by the respondent and he was trying to take benefit of his own wrongs.

6. On the other hand, learned counsel for the respondent besides supporting the judgment passed by the trial court submitted that the trial court vide judgment dated 6.5.2006, Ex.PH acquitted the respondent and his family members in FIR No. 133 dated 12.3.1997, registered under Sections 323, 406, 498-A, 506, 34 of the Indian Penal Code, on the complaint of the appellant. It was also submitted that the divorce petition filed by the appellant was allowed by the trial court and the appeal against the same was allowed by this Court holding that the husband was never cruel to the wife and on further appeal in the Supreme Court by the appellant, the same was dismissed.

7. After hearing learned counsel for the parties, we do not find any merit in the contentions of learned counsel for the appellant.

8. The primary question that arises for consideration in this appeal is whether the acquittal of the husband and his family members of matrimonial offences under Sections 323, 406, 498-A, 506, 34 of the Indian Penal Code would be sufficient to hold that it has caused mental

cruelty to the husband so as to entitle him to a decree of divorce under Section 13(1)(ia) of the Act.

9. Section 13(1)(ia) of the Act empowers the Court to dissolve the matrimonial ties between the parties by a decree of divorce on a petition by either spouse where the said spouse has been treated with cruelty after the solemnization of the marriage. Cruelty has not been defined in the Act but various pronouncements of the Apex Court and other High Courts have outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse treats the other and manifests such feelings towards him or her as to cause reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental. Whether a spouse is inflicted with physical cruelty or not, it can be judged on the basis of direct evidence whereas mental cruelty is to be inferred on analyzing the factual matrix of each case and drawing conclusion thereon.

10. The Apex Court in **Parveen Mehta v. Inderjit Mehta 2002 (3) RCR (Civil) 529** had very elaborately analyzed the expression 'cruelty' as a ground of divorce under the Act. The relevant portion thereof reads thus:-

“Under the statutory provision cruelty includes both physical and mental cruelty. The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined under the Act. Probably, the Legislature has advisedly refrained from making any attempt at giving a comprehensive definition of the expression that may cover all cases, realising the danger in making such

attempt. The accepted legal meaning in England as also in India of this expression, which is rather difficult to define, had been 'conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger.

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21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take

an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

11. Further, setting out illustrative cases of mental cruelty, the Supreme Court in **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511** had held as under:-

“No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

12. In addition to the aforesaid, certain other illustrations were added by the Apex Court in **K. Srinivas Rao v. D.A. Deepa (2013) 5 SCC 226** as under:-

“Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

13. Elucidating 'mental cruelty' the Apex Court in **K. Srinivas Rao's case (supra)** concluded that if a false criminal complaint is filed against the spouse and his/her relatives regarding matrimonial offences, it would be a case of mental cruelty. Following the aforesaid pronouncement, the Division Bench of this Court in **Imlesh v. Amit, AIR 2014 Punjab and Haryana 89**, observed as under:-

“So far as the finding of the trial Court regarding cruelty on the basis of involvement in a false criminal case is concerned, it may be said that it in itself constitutes sufficient ground for granting divorce as it amounted to cruelty. Reference in this regard may be made to the case in **K. Srinivas Rao v. D.A. Deepa (2013) 5 SCC 226: AIR 2013 SC 2176**, where it was held by Hon'ble the Supreme Court that where indecent/ defamatory statements are made in the complaint/ criminal proceedings, the same singly and cumulatively amounted to mental cruelty warranting grant of divorce. If a false complaint is filed against the spouse or his/her relatives, it amounted to mental cruelty. In the said case also, wife had filed a case under Section 498-A IPC and the husband and his family members were acquitted and decree of divorce was granted to the husband on that ground, as it amounted to mental cruelty.”

14. Similar view was reiterated by the Supreme Court in **K. Srinivas v. K. Sunita Civil Appeal No. 1213 of 2006** decided on 19.11.2014 with the following observations:-

“4. In the case in hand, learned counsel for the Respondent-Wife has vehemently contended that it is not possible to label the wife's criminal complaint detailed above as a false or a vindictive action. In other words, the acquittal of the Appellant and his family members in the criminal complaint does not by

itself, automatically and justifiably, lead to the conclusion that the complaint was false; that only one complaint was preferred by the Respondent-Wife, whereas, in contradistinction, in **K.Srinivas Rao** a series of complaints by the wife had been preferred. The argument was premised on the averment that the investigation may have been faulty or the prosecution may have been so careless as to lead to the acquittal, but the acquittal would not always indicate that the Complainant had intentionally filed a false case. What should be kept in perspective, it is reasonably argued, that the Complainant is not the controlling conductor in this Orchestra, but only one of the musicians who must deliver her rendition as and when and how she is called upon to do. Secondly, according to the learned counsel, the position would have been appreciably different if a specific finding regarding the falsity of the criminal complaint was returned, or if the Complainant or a witness on her behalf had committed perjury or had recorded a contradictory or incredible testimony. Learned counsel for the Respondent-Wife states that neither possibility has manifested itself here and, therefore, it would be unfair to the Respondent-Wife to conclude that she had exhibited such cruelty towards the Appellant and her in-laws that would justify the dissolution of her marriage.

5. The Respondent-Wife has admitted in her cross-examination that she did not mention all the incidents on which her Complaint is predicated, in her statement under Section 161 of the Cr.P.C. It is not her case that she had actually narrated all these facts to the Investigating Officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was “ill advised”. Adding thereto is the factor that the High Court had been informed of the acquittal of the Appellant-Husband and members of his family. In these circumstances, the High Court ought to have concluded that the Respondent-Wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the Appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(ia) of the Hindu Marriage Act.

6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In

any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was lead, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.”

15. Examining the factual matrix in the present case, the respondent and his family members were acquitted vide judgment dated 6.5.2006, Ex.PH in dowry case registered vide FIR No. 133 dated 12.3.1997, registered under Sections 323, 406, 498-A, 506, 34 of the Indian Penal Code, on the complaint of the appellant. Further, the divorce petition which was filed by the appellant though was allowed by the trial court vide judgment and decree dated 1.9.2000, Ex.PP, but the respondent challenged the said judgment and decree before this Court and the judgment and decree Ex.PP passed by the trial court was set aside holding that the husband had not acted with cruelty to the wife and against which the appeal filed by the appellant before the Apex Court was also dismissed. In such circumstances, it would cause a reasonable apprehension in the mind of the husband that it was not safe

for him to live with the wife. Besides, refusing to attend household chores and showing disrespect to the respondent and his family members amounted to cruelty towards the respondent. Further, there had been no resumption of co-habitation between the parties and, therefore, the appellant was certainly having intention to desert the respondent. The finding of desertion recorded by the trial court was not shown to be erroneous or perverse in any manner. Thus, the irresistible conclusion would be that the appellant-wife had treated the husband-respondent with cruelty and had deserted to have separate residence from him. Equally, in view of the affirmation of findings of the trial court on the ground of cruelty and desertion, the plea of the learned counsel for the appellant that the respondent-husband has been taking advantage of his own wrongs is legally untenable and is, thus, rejected. Accordingly, there is no error or perversity in the findings recorded by the trial court which may warrant interference by this Court. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 18, 2015
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(SNEH PRASHAR)
JUDGE